

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

JAN 03 2012

JULIA C. DODLEY, CLERK
BY: *Julia C. Dudley*
DEPUTY CLERK

UNITED STATES OF AMERICA,) **CASE NO. 7:10CR00003**

VS.

KENNETH JOE KENNEDY,) **By: James C. Turk**
) **Senior United States District Judge**
Defendant.)

In accordance with the accompanying memorandum opinion, it is hereby

ADJUDGED AND ORDERED

As follows:

1. The motion to vacate, set aside or correct the sentence, pursuant to 28 U.S.C. § 2255, (ECF No. 224) is **DISMISSED** without prejudice and stricken from the court's active docket;
 2. Based upon the court's finding that the defendant has not made the requisite showing of denial of a substantial right, a certificate of appealability is **DENIED** regarding the court's order dismissing the § 2255 motion; and
 3. The defendant's motion for new trial (ECF No. 223) is **DENIED** as without merit.

ENTER: This 3rd day of January, 2012.

James F. Tush
Senior United States District Judge